

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

MARY TERESE SULLIVAN,

PLAINTIFF

v.

**KENNETH S. APFEL, Commissioner
of Social Security,**

DEFENDANT

CIVIL No. 00-26-B-H

ORDER

The Appeals Council has remanded this case to the Administrative Law Judge in order to obtain additional evidence regarding the claims. The case remains in a pending status before the Administrative Law Judge. Nevertheless, the plaintiff wants this Court to review the case now. Because the Appeals Council's decision to remand is not a "final decision" under the Social Security Act, 42 U.S.C.A. ' 405(g) (West Supp. 1999), and the case is still pending before the Administrative Law Judge, I have no jurisdiction at this time to hear the claim. Therefore, I **GRANT** the defendant's motion to dismiss.

Federal courts can review only the "final" decision of the Commissioner of Social Security. 42 U.S.C.A. ' 405(g) (West Supp. 1999). A decision to remand for the purpose of obtaining additional evidence is not a "final" decision, because additional fact finding is needed. See Duda v. Secretary of Health and Human Servs., 834 F.2d 554, 555 (6th Cir. 1987) (per curiam); cf. Director, Office of

Workers= Compensation Program v. Bath Iron Works Corp., 853 F.2d 11, 13-15 (1st Cir. 1988) (under Longshore and Harbor Workers= Compensation Act, which provides for judicial review of Afinal@orders of the Benefit Review Board, an order remanding to the Administrative Law Judge is not a Afinal@decision). Indeed, the benefits of requiring administrative exhaustion would be lost if a court reviewed an agency decision before the agency completed its own evaluation of the evidence.

The regulations do not dictate a contrary result. They explicitly distinguish between a remand and a decision by the Appeals Council. AAfter it has reviewed all the evidence in the administrative law judge hearing record and any additional evidence received . . . , the Appeals Council will make a decision or remand the case to an administrative law judge.@ 20 C.F.R. ' 404.979 (1999) (emphasis added). Until the Appeals Council makes a decision or declines to review the Administrative Law Judge=s decision, there is no Afinal@ decision of the Commissioner with respect to that claim. See 20 C.F.R. ' 404.981 (1999).

Therefore, I GRANT the defendant=s motion to dismiss for lack of subject matter jurisdiction.

SO ORDERED.

DATED THIS 6TH DAY OF JUNE, 2000.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Bangor)
Civil Docket for Case #: 00-CV-26

MARY TERESE SULLIVAN
plaintiff

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v.

SOCIAL SECURITY ADMINISTRATION
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